SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-431
Lower Tribunal No. 2021-CF-001832-AXXX-XX

STATE OF FLORIDA,

Appellant,

v.

TIMOTHY B. HICKMAN,

Appellee.

Appeal from the Circuit Court for Collier County.
Ramiro Manalich, Judge.

February 17, 2023

TRAVER, J.

The State of Florida appeals an order granting Timothy B. Hickman's motion to suppress drugs a police officer found in a car in which Hickman was a passenger.[1] We have jurisdiction. *See* Fla. R. App. P. 9.140(c)(1)(B). The officer conducted a

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

proper investigatory stop because the car was parked in a no-parking zone.[2] Accordingly, we reverse.

On the night of the incident, a lone police officer responded to a citizen complaint that a car was "backed in on the roadway near the guardrail in [an] area where there was a vacant lot" in a residential neighborhood. The caller worried that the car's occupants were "casing" the neighborhood.

Stephanie Tompkins was sitting in the driver's seat, and her car was indeed backed in and parked at the dead end of a two-lane unmarked residential street, adjacent to a vacant lot and next to a no-parking sign. At the time the officer approached Tompkins' car, he was not aware she was in a no-parking zone. Indeed, he did not believe she was committing any traffic or criminal offense. But when Tompkins lowered her window, the officer saw drugs and drug paraphernalia in open view. A search incident to arrest revealed drugs in a backpack at Hickman's feet.

The State argued that the officer had performed a valid investigatory stop because Tompkins was parked in a no-parking zone. *See* § 316.1945(1)(c)2., Fla. Stat. (2021). The trial court agreed that Tompkins was parked in a no-parking zone, and nothing refuted the officer's testimony that the sign existed on the night of the stop. It concluded, however, that "no clear evidence [showed] that there was a

[2] The State alternatively argued that the officer's interaction with Hickman and the car's driver was a consensual encounter. Due to our conclusion, we need not reach this issue.

parking violation." It alternatively found that a parking violation did not motivate the officer's actions in approaching Tompkins' car. The trial court therefore granted Hickman's motion to suppress.

We review a trial court's ruling on a motion to suppress as a mixed question of fact and law. *See Connor v. State*, 803 So. 2d 598, 605 (Fla. 2001). We defer to the trial court's findings of fact, if they are supported by competent, substantial evidence. *See Jackson v. State,* 18 So. 3d 1016, 1027 (Fla. 2009). But we review de novo mixed questions of law and fact and the trial court's legal conclusions. *See Wyche v. State*, 987 So. 2d 23, 25–26 (Fla. 2008). A trial court's ruling on a motion to suppress comes to us clothed with a presumption of correctness, and we must interpret the evidence and reasonable inferences from it in a manner most favorable to sustaining the ruling. *See McNamara v. State*, 357 So. 2d 410, 412 (Fla. 1978).

We first conclude that the record does not support the trial court's finding that there was no clear evidence of a parking violation. *See State v. Battle*, 232 So. 3d 493, 496 (Fla. 2d DCA 2017). The officer stated that Tompkins was in a no-parking zone, and the State introduced a photo of the no-parking sign. The officer's dashboard camera also showed the sign and the car's proximity to it. And Tompkins' counsel conceded below that Tompkins was parked in front of a no-parking sign.

We further conclude that the trial court erred by relying on the officer's subjective intent in stopping Tompkins. "The Fourth Amendment to the United

States Constitution and section 12 of Florida's Declaration of Rights guarantee citizens the right to be free from unreasonable searches and seizures." *Golphin v. State*, 945 So. 2d 1174, 1179 (Fla. 2006). A traffic stop is a seizure. *See Whren v. United States*, 517 U.S. 806, 809–10 (1996); *Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997). This type of seizure is considered reasonable, though, under the Fourth Amendment where an officer has probable cause to believe a traffic violation has occurred. *See Whren*, 517 U.S. at 810. Thus, when addressing the constitutional validity of a traffic stop, Florida courts employ a "strict objective test which asks only whether any probable cause for the [traffic] stop existed." *Holland*, 696 So. 2d at 759 (citing *Whren*, 517 U.S. at 819). Stated differently, the officer's subjective motivation for speaking to Tompkins is irrelevant to our determination of whether his stop was reasonable. *See Whren*, 517 U.S. at 813 ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."); *Holland*, 696 So. 2d at 759 ("In determining whether the suppression order in the instant case should be reversed, we are constrained to review the record under the objective test of *Whren*. When applying the objective test, generally the only determination to be made is whether probable cause existed for the stop in question.").

Here, probable cause existed for the officer's stop because Tompkins' car was parked illegally. *See* § 316.1945(1)(c)2.; *State v. Arevalo*, 112 So. 3d 529, 531–32

(Fla. 4th DCA 2013).[3] The officer did not, therefore, violate Hickman's Fourth Amendment rights. *See Battle*, 232 So. 3d at 497.

REVERSED and REMANDED for further proceedings.

STARGEL and MIZE, JJ., concur.

Ashley Moody, Attorney General, Tallahassee, and Cerese Crawford Taylor, Assistant Attorney General, Tampa, for Appellant.

Howard L. "Rex" Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

[3] We are unbound by our sister courts' precedent, including any prior Second or Fifth District decisions. *See Pardo v. State*, 596 So. 2d 665, 667 (Fla. 1992) ("[A]s between District Courts of Appeal, a sister district's opinion is merely persuasive." (quoting *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976))). The *Arevalo* court correctly concluded, though, that parking in a no-parking zone provides probable cause for a traffic stop.